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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JASON OLIVAS, Defendant and Appellant.	E061974 (Super.Ct.No. FVA1000655) OPINION

APPEAL from the Superior Court of San Bernardino County. Steven A. Mapes, Judge. Affirmed with directions.

Renee Rich, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, A. Natasha Cortina, and Kristen Kinnaird Chenelia, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Jason Olivas was found guilty of sexually molesting the 11-year-old daughter of his father's live-in caregiver. A jury convicted him of two counts of committing a lewd act upon a child under the age of 14. (Pen. Code, § 288, subd. (a),[1] counts 1, 2.) In a bifurcated trial, the court found true the allegations that defendant had three prior convictions for committing a lewd act upon a child under the age of 14 (§ 288, subd. (a)) and one prior conviction for committing a lewd act upon a child under the age of 14 by use of force (§ 288, subd. (b)). The trial court sentenced defendant to 85 years to life in state prison.[2] The court awarded defendant 1,606 days of custody credit, but refused to award conduct credit.

Defendant challenges his conviction on two grounds. First, he argues he did not receive notice of the charges, because the evidence adduced at trial involved offenses not shown at the preliminary hearing. Second, he contends the use of the phrase "the touching need not be done in a lewd or sexual manner" in CALCRIM No. 1110 relieved the prosecution of its burden to prove he acted with the required lewd intent. Regarding his sentence, defendant argues, and the People concede, that he was entitled to 240 days

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[1] All unspecified statutory references are to the Penal Code.

[2] The sentence was comprised of: 25 years to life, tripled to 75 years to life under the "Three Strikes" law for each count, plus 10 years for defendant's two prior serious felony convictions. The sentence of 75 years to life on count 2 was ordered to run concurrent to the sentence on count 1.

of presentence conduct credit. We agree the trial court should have awarded defendant presentence custody credits, but in all other respects, we affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

A. *Prosecution's Case*

1. *Defendant's molestation of the victim at the Fontana house*

The victim's mother worked as Ronald Olivas's (defendant's father) live-in caretaker and stayed in a room in Olivas's house in Fontana. The victim lived with her father in Rialto and would visit her mother at the Fontana house on the weekends. From December 2009 through April 2010, defendant molested the victim on various occasions when she stayed at the Fontana house.

When the victim met defendant for the first time in December 2009, she was 11 years old and in fifth grade. The victim testified that defendant gave her a hug and rubbed his hand up and down her buttocks for three to four seconds. He threatened to kill the victim's mother if she said anything.

The victim nevertheless told her mother defendant had touched her buttocks and made her feel uncomfortable. When her mother confronted defendant about the incident, he said the victim had jumped on him to give him a hug and he accidentally touched her buttocks when he caught her.

However, defendant continued to touch the victim's buttocks after the hugging incident. The victim estimated that, during the period of December 2009 to April 2010, defendant touched her buttocks at least five different times. On one occasion in April 2010, the victim was sleeping in her mother's room in the Fontana house. When she woke up, defendant's hand was underneath her clothing and he was rubbing near her anus. The victim got up and defendant asked her, "what's wrong?" The victim replied, "I don't want to." On another occasion, defendant rubbed the victim's buttocks and chest when they were in the bathroom. The victim tried to leave but defendant was blocking the bathroom door with his body. The victim tried to climb onto the toilet to crawl out of the window but defendant held her back. The other times defendant touched the victim's buttocks in the Fontana house it was over her clothing.

The victim testified that defendant touched her breast when she was in her mother's room. Defendant was sitting in a recliner chair and, as the victim passed him, he pulled her towards him and put his hand on her breast.

The victim also testified that defendant asked her to touch his penis. They were in her mother's room watching television; defendant was sitting in the recliner chair and the victim was sitting on the bed. When the victim looked over at defendant, he was holding his penis and rubbing it up and down with his hand. She tried to ignore defendant and focus on the television. Defendant grabbed her hand and rubbed it up and down on his

penis for about five seconds. The victim was clenching her hand in a fist so only the back of her hand actually touched his penis.

Another incident occurred in April 2010, around Easter. The victim and defendant were lying on her mother's bed, throwing papers into a trash can. Defendant put his hand down her pants and underwear and touched her vagina. He also inserted his finger into her vagina. The victim told defendant to stop and got up to leave the room. Defendant again threatened to kill her mother if she said anything.

In April 2010, after watching a family life video about "growing up" and "stranger danger" with her fifth grade class, the victim told her teacher defendant had been touching her "where her bathing suit covered . . . 'down there.' " The teacher reported the incident to San Bernardino County Child And Family Services (CFS). On April 25, 2010, Detective Liam Coughlin from the Fontana Police Department interviewed the victim about defendant's molestation.

2. *Defendant's molestation of his niece in 1991*

Defendant's niece, who was 34 at the time of trial, testified that defendant started molesting her when she was 11 years old. Defendant progressed from grabbing her buttocks and breasts to touching her vagina, first over her clothing, then beneath her clothing. On one occasion, defendant came into the bathroom while his niece was taking a shower at her grandmother's house. He groped her breasts and buttocks and inserted his finger into her vagina. When she tried to resist him, he threatened to hurt her mother

and touch her younger sisters. On another occasion, defendant told his niece he had a new game and pulled out his penis. He made her stroke his penis until he ejaculated. Often when defendant was molesting his niece, he held her down or against something to prevent her from leaving.

On March 14, 1996, defendant was convicted of two counts of committing a lewd act upon a child under the age of 14, and one count of committing a lewd act by force upon a child under the age of 14, for molesting his niece in 1991.

B. *Defense Case*

Defendant's theory at trial was that the victim had fabricated her allegations and no lewd conduct had occurred at the Fontana house. To discredit the victim's allegations, counsel examined the CFS employee who had received the report of molestation from the victim's teacher. The CFS employee confirmed that her incident report stated the victim was six or seven years old when the alleged molestation had occurred. Counsel also examined an investigator who spoke to the victim's fifth grade teacher on three occasions. The teacher told the investigator she could not remember when the victim said the molestation had occurred, but she thought it may have occurred 12 to 18 months before the victim reported it. When the investigator asked the teacher what kind of student the victim was, the teacher responded that sometimes the victim would act out in class to get attention.

The girlfriend of defendant's brother testified that the victim's mother was attracted to defendant and "wanted to be with [him]."

II

DISCUSSION

A. *Notice of the Charges*

Defendant contends he was convicted of offenses not adduced at the preliminary hearing, in violation of his constitutional right to notice of the charges against him. Specifically, he argues the prosecution did not present any evidence at the preliminary hearing to support the victim's trial testimony that he touched her breast or buttocks in the bathroom or that he touched her breast in her mother's bedroom.

At no point during trial did defendant argue that the offenses presented at trial were not the same ones shown at the preliminary hearing. A failure to object waives a claim of inadequate notice of the charges. (*People v. Gil* (1992) 3 Cal.App.4th 653, 659.) Moreover, even if defendant had preserved this claim for appeal, the claim lacks merit.

1. *Additional factual background*

The felony complaint charged defendant with committing two counts of a lewd act (§ 288, subd. (a)) on the victim "[o]n or about December 1, 2009 through April 23, 2010." At the preliminary hearing, Detective Coughlin testified that he had interviewed the victim on April 20, 2010. The victim told him that defendant had touched her inappropriately at the Fontana house, that the touching began in December 2009, and that

it had last occurred in April 2010. Detective Coughlin described the following five incidents, as told to him by the victim:

1. In December 2009, the first time the victim met defendant, he gave her a hug and squeezed her buttocks.

2. In March 2010, when the victim was watching television on her mother's bed, defendant reached underneath her and squeezed her buttocks.

3. In April 2010, the victim woke from a nap to find defendant's hand down her pants and his finger in her "anal cleft," about an inch from her anus.

4. Defendant asked the victim to touch his penis, and then tried to force her hand to his penis.

5. On Easter 2010, when the victim and defendant were in her mother's room throwing paper into a trash can, defendant reached into her pants and inserted his finger in her vagina.

The court specified count 1 as the December incident and count 2 as the March incident, and found reason to hold defendant to answer on those counts. The court found reasonable cause to support the other incidents described at the hearing. The court stated, "[t]here's no further counts alleged, but they're incorporated as to the other counts, and [the prosecution] can, if you wish, amend that Complaint to allege those specific dates at a later date." The prosecution never elected to amend the complaint to allege discrete

dates for counts 1 and 2; instead, it left the counts as originally charged, that is, as identifying a four-month period encompassing all of defendant's alleged conduct.

At trial, the victim testified to all five of the incidents presented at the preliminary hearing. The victim also testified to two incidents that had not been specifically described at the preliminary hearing. One was the incident in the bathroom where defendant touched her breasts and buttocks and would not let her leave. The other was the incident in the victim's mother's room where defendant was sitting in a recliner and pulled the victim to him and fondled her breast.

During the jury instruction conference, the court and the parties agreed that the evidence showed seven separate acts of defendant touching the victim. During her closing statement, the prosecutor described those seven acts as follows:

1. Defendant rubbed the victim's buttocks when they first met in December 2009.
2. Defendant touched the victim's buttocks over her clothes in her mother's room.
3. Defendant touched the victim's bare buttocks, near her anus.
4. Defendant touched the victim's breasts in the bathroom.
5. Defendant touched the victim's buttocks in the bathroom.
6. Defendant forced the victim to touch his penis.
7. Defendant digitally penetrated the victim's vagina.[3]

[3] The prosecutor did not mention alleged incident where defendant touched the victim's breast in her mother's bedroom.

The prosecutor told the jury it could rely on any of the seven acts to support the two charges, explaining: "[Y]ou must not find the defendant guilty unless you all agree, all 12 of you agree, that the People have proved that the defendant committed at least one of those acts, and you all agree on which act he committed, or you all agree that the People have proved the defendant committed [all] the act[s] alleged to have occurred during this time period."

2. *Analysis*

Due process requires that "an accused be advised of the charges against him so that he has a reasonable opportunity to prepare and present his defense and not be taken by surprise by evidence offered at his trial." (*People v. Jones* (1990) 51 Cal.3d 294, 317 (*Jones*).) "[I]n modern criminal prosecutions initiated by informations, the transcript of the preliminary hearing . . . affords defendant practical notice of the criminal acts against which he must defend." (*Ibid*.) "[A] defendant may not be prosecuted for an offense not shown by the evidence at the preliminary hearing or arising out of the transaction upon which the commitment was based." (*People v. Burnett* (1999) 71 Cal.App.4th 151, 165-166 (*Burnett*).)

However, "the defendant has no right to notice of the specific time or place of an offense, so long as it occurred within the applicable limitation period." (*Jones*, *supra*, 51 Cal.3d at p. 317.) "So long as the evidence presented at the preliminary hearing supports the number of offenses charged against defendant and covers the timeframe(s) charged in

the information, a defendant has all the notice the Constitution requires." (*People v. Pitts* (1990) 223 Cal.App.3d 606, 904 (*Pitts*), superseded by statute on other grounds as stated in *People v. Levesque* (1995) 35 Cal.App.4th 530, 537.)

Here, defendant had sufficient notice of the bathroom incident because it occurred within the time period charged in the information, and it involved the same location (the Fontana house), the same type of conduct (lewd touching of the breast and buttocks), and the same victim as the other incidents presented at the preliminary hearing.[4] As the court in *Pitts*, *supra*, 223 Cal.App.3d 606 explained, a defendant's "opportunity to prepare an effective defense would not be affected merely because the evidence at trial showed the offenses occurred at a different time . . . or a different room of the house." (*Id.* at p. 906.) The variance defendant complains of here is a time and place variance. Detective Coughlin testified at the preliminary hearing that the victim told him defendant had touched her inappropriately on multiple occasions from December 2009 to April 2010.

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[4] We disregard defendant's challenge regarding the trial evidence that he touched the victim's breast in her mother's bedroom because this incident was not one of the seven incidents the prosecution relied on to support the two section 288 charges. Additionally, defendant argues he lacked notice of the incident where he made the victim touch his penis because Detective Coughlin testified at the preliminary hearing only that defendant *tried* to make the victim touch his penis, not that he had *succeeded*. While defendant mentions this incident in his opening brief, he raises the argument that he lacked notice of the incident for the first time in his reply brief. In any event, this type of variance in testimony affects "the weight and credibility of the testimony, not . . . the question of notice." (*People v. Gil*, *supra*, 3 Cal.App.4th at p. 659, citing *Jones*, *supra*, 51 Cal.3d at p. 320.)

That two of those touchings happened in a room of the house that the detective had not described at the preliminary hearing did not deprive defendant of notice that he was being charged with committing lewd and lascivious acts upon the victim at the Fontana house from December 2009 to April 2010.

The cases defendant relies on to support his claim of inadequate notice are inapplicable. This case is not like *Pitts, supra,* 223 Cal.App.3d 606 which involved allegations that numerous adults committed multiple lewd acts upon numerous minors, over a prolonged period of time. (*Id*. at pp. 634-635.) The *Pitts* court concluded that, as to the trial evidence regarding some of the many counts of lewd conduct, there had been absolutely no evidence at the preliminary hearing of the specific sexual contact between the specific named perpetrators and victims. (*Id.* at pp. 908-914.) In other words, the variance between the preliminary hearing and trial evidence was not simply a matter of time and place; rather, it pertained to the type of conduct, the identity of the victim, and the identity of the perpetrator. The *Pitts* court expressly distinguished this type of variance from a time and place variance, like the one here. The court explained that variances in time and place are not material, and therefore do not deprive a defendant of notice: "Even in alibi cases, neither the time [citation] nor the place at which an offense is committed [citation] is material, and an immaterial variance will be disregarded [citation]." (*Id.* at p. 906.)

Defendant also relies on *Burnett*, *supra*, 71 Cal.App.4th 151, which we find distinguishable. In *Burnett*, a witness testified at the preliminary hearing that the defendant possessed a .38-caliber revolver. At trial, however, a different witness gave evidence, not mentioned at the preliminary hearing that at a different time on the same date the defendant possessed a different gun, a .357-caliber revolver. In closing argument, the prosecutor told the jury the defendant had possessed two different guns and, accordingly, he could be convicted of the possession charge based on the description of either gun. (*Id.* at pp. 167, 169.) The appellate court concluded, "There can be no question that the evidence in this case showed two completely different incidents, involving two separate weapons." (*Id.* at p. 169.)

In so concluding, the *Burnett* court distinguished "sexual abuse cases involving testimony given by a given victim about acts occurring over a period of time that cannot necessarily be tied to specific dates or locations." (*Burnett*, *supra*, 71 Cal.App.4th at p. 175.) In such cases, the "evidence at the preliminary hearing will at least generally describe the incidents upon which criminal conduct is predicated, subject to the inherent limitations of the subject matter with which those cases dealt." (*Ibid.*) The *Burnett* court found the case before it distinguishable because the evidence "[did] not involve a single witness describing separate acts of a similar nature," like the instant case, "but rather distinct witnesses to distinct incidents that could have been (although they were not required to be) charged as separate offenses." (*Ibid*.)

People v. Dominguez (2008) 166 Cal.App.4th 858 and *People v. Graff* (2009) 170 Cal.App.4th 345 are also unhelpful to defendant's argument. In *Dominguez*, unlike here, the evidence presented at trial fell outside of the time period charged in the complaint and presented at the preliminary hearing. (*Id.* at pp. 861-862, 866.) In *Graff*, the charges added at trial were charges the magistrate had dismissed for lack of evidence at the preliminary hearing. (*People v. Graff*, *supra*, at p. 367.)

In any event, assuming defendant had lacked actual notice of the bathroom incident, he did not suffer prejudice. The record demonstrates that his ability to prepare a defense against the bathroom incident was not impeded. As part of discovery, defendant received a copy of the victim's recorded interview with Detective Coughlin, in which the victim alleged defendant tried to touch her breasts in the bathroom and she tried to climb through a window to get away from him. (See *Jones*, *supra*, 51 Cal.3d at p. 317 ["In addition to the advance notice provided by the information and preliminary examination, . . . [a] defendant may learn further critical details of the People's case through demurrer to the complaint or pretrial discovery procedures"].) During cross-examination of the victim, defense counsel used the transcript of the interview to refresh her recollection. Defense counsel then asked the victim a series of questions about the bathroom incident,

the details of which were not disclosed during direct examination.[5] Additionally, defense counsel presented pictures of the bathroom at the Fontana house to discredit the victim's account of trying to climb on the toilet to get out through the window. Counsel's knowledge of the details of the victim's allegations regarding the bathroom incident and counsel's attempt to discredit those allegations undercut defendant's claim that he lacked notice of, and an opportunity to defend against, the incident.

Furthermore, it is unlikely defendant's ability to prepare a defense was prejudiced because his "defense was not a specific alibi but a denial that molestations occurred at all." (*People v. Gil*, *supra*, 3 Cal.App.4th at p. 659, citing *Jones*, *supra*, 51 Cal.3d at p. 319.) Defendant claimed that he never inappropriately touched the victim in any room or location in the Fontana house and that the victim had fabricated her allegations.

We therefore conclude defendant did receive adequate notice of the charges against him. Because we so conclude, defendant's alternative argument that his attorney provided ineffective assistance of counsel by failing to object to the notice issue necessarily fails.

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[5] For example, defense counsel asked the victim whether she remembered telling Detective Coughlin that she had been playing a board game with a group of people in another room prior to the incident and that she had pounded on the bathroom wall to get her mother's attention.

B. *The Section 228, Subdivision (a) Instruction (CALCRIM No. 1110)*

The trial court instructed the jury on the elements of section 288, subdivision (a) with a modified version of CALCRIM No. 1110, as follows (in relevant part):

"The defendant is charged in counts 1 and 2 with committing a Lewd or Lascivious Act on a Child Under the Age of 14 years.

"To prove that the defendant is guilty of this crime, the People must prove that:

"1. The defendant willfully touched any part of a child's body either on the bare skin or through the clothing;

"2. The defendant committed the act with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or the child;

"AND

"3. The child was under the age of 14 years at the time of the act.

"The touching need not be done in a lewd or sexual manner."

Defendant contends the phrase "the touching need not be done in a lewd or sexual manner" likely misled the jury that it was not necessary to find defendant acted with a lewd intent. Defendant forfeited this claim, however, because he failed to raise it at trial. (*People v. Hudson* (2006) 38 Cal.4th 1002, 1011-1012.) Putting aside defendant's failure to preserve the issue, it is without merit.

We review a claim of instructional error de novo. (*People v. Manriquez* (2005) 37 Cal.4th 547, 581.) When reviewing a claim of misleading or ambiguous instructions, we inquire "whether there is a reasonable likelihood that the jury misunderstood and misapplied the instruction." (*People v. Moore* (2011) 51 Cal.4th 1104, 1140.) "We consider the instructions as a whole and assume the jurors are intelligent persons capable of understanding and correlating all the instructions." (*People v. Butler* (2010) 187 Cal.App.4th 998, 1013.)

Defendant's challenge has been expressly rejected by *People v. Sigala* (2011) 191 Cal.App.4th 695 (*Sigala*) and *People v. Cannata* (2015) 233 Cal.App.4th 1113 (*Cannata*), and for good reason. In *People v. Martinez* (1995) 11 Cal.4th 434, the California Supreme Court explained that the perpetrator's intent is the controlling factor in a section 288 conviction, and the offense may involve any manner of touching, even a touching that is not inherently sexual in nature. (*People v. Martinez*, *supra*, at p. 444.) In *Sigala*, the court held that the phrase "touching need not be done in a lewd or sexual manner" was "an accurate statement of law" and "entirely consistent with *Martinez*." (*Sigala*, *supra*, at p. 701.)

We agree with the *Sigala* court's conclusion. The instruction the court gave in the instant case expressly required the jury to find that defendant "willfully" touched the victim with "the intent of arousing, appealing to, or gratifying the lust, passions, or sexual

desires of himself or the [victim]." Intent and manner are separate concepts, and we assume the jury understood that.

Defendant contends *People v. Cuellar* (2012) 208 Cal.App.4th 1067 dictates otherwise. We disagree. In *Cuellar*, the appellate court observed that the phrase at issue here was "possibly confusing" and recommended a revision to convey "that the touching need not be made to an intimate part of the victim's body, so long as it is done with the required intent." (*Id.* at pp. 1071-1072.) Nevertheless, the court concluded the phrase did not mislead the jury when taken with the section 288 instruction as a whole. (*People v. Cuellar*, *supra*, at p. 1072.)

In *Cannata*, *supra*, 233 Cal.App.4th 1113, the court observed that "the *Cuellar* court does not actually disagree with *Sigala*." (*Id*. at p. 1125.) Rather, "*Cuellar* ultimately finds it unnecessary to resolve the arguable inconsistency," because it concludes the instruction as a whole would not have confused the jury because "virtually all of the touching described in the testimony was sexual, rather than incidental, in nature." *Id*. at p. 1126.) Following the reasoning of *Cuellar*, the *Cannata* court concluded the phrase did not mislead the jury on the issue of lewd intent because the touching described in the victim's testimony was clearly sexual. (*Cannata*, *supra*, at p. 1126.)

Put another way, where the conduct presented at trial is "unquestionably of a sexual nature," courts have concluded that any potential error caused by the phrase "the

touching need not be done in a lewd or sexual manner" is harmless. (*Sigala*, *supra*, 191 Cal.App.4th at p. 701.) Like the conduct in *Sigala*, *Cuellar*, and *Cannata*, defendant's conduct in the instant case, e.g., digitally penetrating the victim's vagina, rubbing her bare buttocks near her anus, and forcing her to touch his penis, was unquestionably sexual. Because his theory at trial was that the conduct had not occurred, not that the conduct was innocent, the complained-of phrase could not have caused him prejudice.

Defendant argues the evidence demonstrated that some of the touching was of an innocent nature. He relies on the victim's mother's testimony that she never saw any inappropriate touching and her testimony that defendant denied grabbing the victim's buttocks during their introductory hug. The evidence at trial was overwhelmingly to the contrary. The victim, whom the jury necessarily found credible, testified that defendant touched sexual parts of her body and that on many occasions he threatened her not to tell anyone about his conduct. Furthermore, defendant did not argue that any of the incidents happened but were innocent; he claimed they were all fabricated.

We conclude there was no error in the version of CALCRIM No. 1110 the trial court gave the jury. Based on this conclusion, we reject defendant's contention that his attorney provided ineffective assistance of counsel by failing to object to the instruction.

C. *Presentence Conduct Credit*

At the sentencing hearing, the court awarded defendant 1,606 days of custody credit and denied his request for presentence conduct credit based on the prosecutor's

assertion that he was not entitled to presentence conduct credit under *In re Cervera* (2001) 24 Cal.4th 1073. The defendant argues, and the People correctly concede, that he is entitled to presentence conduct credit.

In re Cervera held that a defendant who is sentenced to an indeterminate life term under sections 667 and 1170.12 (the three strikes law) is not eligible for postsentence prison conduct credit. (*In re Cervera*, *supra*, 24 Cal.4th at p. 1078.) After *In re Cervera*, our high court clarified that the Three Strikes law "expressly refers only to '*post*sentence . . . credits,' . . . and 'does not address *presentence* . . . credits.' " (*People v. Buckhalter* (2001) 26 Cal.4th 20, 32.) A defendant convicted of an offense enumerated in section 667.5, subdivision (c) is entitled to presentence conduct credit limited to 15 percent of actual time served. (*People v. Brewer* (2011) 192 Cal.App.4th 457, 462.) A lewd and lascivious act under section 288, subdivision (a) is one of the offenses enumerated in section 667.5, subdivision (c). (§ 667.5, subd. (c)(6).) Defendant is therefore entitled to 15 percent of his actual presentence custody as presentence conduct credit. Because defendant spent 1,606 days in custody, he should receive 240 days (15 percent of 1,606) of conduct credit, for a total of 1,846 days of presentence credit. (See *People v. Goldman* (2014) 225 Cal.App.4th 950, 962.)

III

DISPOSITION

The trial court is directed to award defendant a total of 1,846 days of presentence credit, to amend its minute order and abstract of judgment, and to deliver a certified copy of the modified minute order and abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment of conviction and the sentence are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

HOLLENHORST
Acting P. J.

MILLER
J.